

REMARKS

The Notice of Allowance mailed December 3, 2008, has been received and its contents carefully noted. Applicant filed an amendment under 37 CFR 1.312 on January 13, 2009 and this amendment was refused entry in a communication mailed January 29, 2009. The undersigned subsequently discussed this matter with Examiner Chen and this renewed amendment under 37 CFR 1.312 is filed in accordance with those discussions.

The previous 312 amendment requested a minor change to claim 24, which was the result of an inadvertent or typographical oversight. The present renewed amendment is submitted under 37 CFR § 1.312 in order to correct that minor typographical matter in claim 24 and further to correct a similar matter in claim 27. Specifically, claims 24 and 27 have been amended to recite wherein a thickness of the second first interlayer insulating film is 1/5 to 1/50 of a total thickness of the first interlayer insulating film and the second interlayer insulating film. The Applicant respectfully submits that the amendments are merely clarifying in nature, and should not in any way affect the scope of protection afforded the claims for infringement purposes, particularly, under the Doctrine of Equivalents.

The previously filed 312 amendment was refused entry based on the assertion that the proposed amendments change/affect the scope of the claim/invention. The applicant respectfully disagrees. While on its face the change in recitation from a "second interlayer insulating film" to a "first interlayer insulating film" may appear to be substantive, upon a more close review, it can be seen that this is merely a minor typographical matter. The amendment is believed to be needed for clarifying or correcting minor obvious errors, for proper disclosure of the invention and do not require a substantial amount of additional work on the part of the Office. The amendment is supported in paragraph [0013] (Summary of the Invention) of the original specification. More specifically, it is necessary to avoid a conflict with that disclosure. That paragraph discloses:

According to the present invention, a thickness of dielectric of a capacitor is determined by a thickness of a lower layer of an interlayer insulator. In an upper

layer etching process, since the lower layer serves as an etching stopper, the thickness of dielectric of a capacitor can be uniform in an entire area. When a thickness of the lower layer of the interlayer insulator is $1/5$ to $1/50$ of an entire thickness of the interlayer insulator, since a thickness of dielectric of the capacitor can be sufficiently thin, it is effective to reduce an area of the capacitor. When a dielectric constant of a material used in the upper layer is different from that of a material used in the lower layer, it is necessary to consider its effect.

Without the present amendment, claims 24 and 27 recite a limitation that inherently results in the lower layer (first interlayer insulating film) thickness of $49/50$ to $4/5$, which contradicts the above disclosure and is lacking reasonable support in the specification; therefore, the amendment is necessary and does not add new matter. Review and approval are respectfully requested. If the Examiner feels that any further discussions about this case would be beneficial, the Examiner is invited to contact the undersigned.

Should it be deemed necessary that a Petition be filed in order to authorize the above requests, the Applicant respectfully requests that the present *Request* be treated as a Petition and that any necessary fees be charged to Deposit Account No. 50-2280.

Respectfully submitted,



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